

Title	Ex Parte Applications
Summary	Rule 379 on ex parte applications would be amended to include an exception from the usual notice requirements for unlawful detainer cases. The amended rule would provide that a party in an unlawful detainer proceeding must give at least four hours' notice before the ex parte appearance, unless there are exceptional circumstances. Rule 379 would also be amended to include various other clarifications and stylistic changes.
Source	Civil and Small Claims Advisory Committee
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Discussion	<p><u>Notice in Unlawful Detainer Proceedings</u></p> <p>Under rule 379, a party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances. The general time required for notice in rule 379 is problematic in many unlawful detainer cases, especially where an eviction is taking place on a Friday, and the ex parte application under the current rule cannot be considered until the following Monday. Thus, it has been proposed that the Judicial Council amend rule 379 to provide for a speedier ex parte procedure in unlawful detainer cases because some courts will not process requests for an ex parte order in such cases unless notice has been given by 10:00 a.m. the court day before the hearing.</p> <p>Unlawful detainer cases have statutory priority (See Code of Civil Procedure, § 1179a), and quick action is often required. The proposal to change the notice requirement to at least four hours before the ex parte appearance, unless exceptional circumstances require shorter notice, is consistent with the expedited and summary nature of unlawful detainer proceedings and their warranted need for special treatment. This proposal would eliminate the problem of clerks rejecting ex parte applications in unlawful detainer cases if notice of the ex parte request has not been given by 10:00 a.m. the court day before the hearing.</p>

Note: A version of this proposal was previously circulated for comment. The rule that was circulated would have added to rule 379 a provision that “a party seeking an ex parte order in an unlawful detainer proceeding must give reasonable notice before the ex parte appearance.” After reviewing the comments, the Civil and Small Claims Advisory Committee was persuaded that a “reasonable notice” standard might lead to different local practices, interpretations, and requirements, which would be inconsistent with the council’s policy of promoting uniform statewide practice. The committee therefore recommends that rule 379 be amended to require at least four hours’ notice before the ex parte appearance in unlawful detainer proceedings, unless there are exceptional circumstances. Public comment is invited on this revised notice provision.

Other Amendments

In addition to the change in the notice requirements in unlawful detainer proceedings, rule 379 would be amended in certain other respects.

First, subdivision (a)(1) would be amended to state that the declaration in support of an ex parte application must indicate that the applicant had informed the opposing party when and where the application would be made within “the applicable time period under (b).” The quoted language would replace the phrase “a reasonable time before the application.” This amendment would make subdivision (a)(1) consistent with subdivision (b).

Second, the last sentence of the first paragraph of subdivision (b) on the declaration regarding notice would be relocated to the subdivision on notice. The second and third paragraphs of subdivision (b) would be placed in a new subdivision (c) entitled “Contents of application,” and later subdivisions would be relettered.

Third, throughout rule 379, the word “must” would replace “shall.” This change would implement the policy favoring the use of plain language in the California Rules of Court. For similar reasons, in subdivision (c), the word “presentation” would replace “presentment.” And in subdivisions (d) and (g), the words “a memorandum of” would be placed before “points and authorities.”

Finally, wherever in the rule, after the mention of a “party,” there are words such as “and/or counsel” and “and the opposing party’s

attorney” would be eliminated whenever they occur after mention of a “party.” Under the definitions in the California Rules of Court, the term “party” includes the party’s attorney of record. Hence, the additional words are unnecessary.

Attachments

Rule 379 of the California Rules of Court is amended, effective January 1, 2003, to read:

Rule 379. Ex parte applications and orders

(a) **[Ex parte application]** An application for an order ~~shall~~ must not be made ex parte unless it ~~appears~~ is accompanied by an affidavit or a declaration showing:

(1) that, ~~within a reasonable time before the application~~ the applicable time period under (b), the party applicant had informed the opposing party ~~or the opposing party's attorney~~ when and where the application would be made; or

(2) that the ~~party applicant~~ party applicant in good faith had attempted to inform the opposing party ~~and the opposing party's attorney~~ but was unable to do so, specifying the efforts made to inform them; or

(3) that, ~~for reasons specified,~~ the ~~party applicant~~ party applicant should not be required to inform the opposing party ~~or the opposing party's attorney~~.

(b) **[Time of ~~n~~Notice]** A party seeking an ex parte order, ~~except in an unlawful detainer proceeding,~~ shall must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances. A party seeking an ex parte order in an unlawful detainer proceeding must give at least four hours' notice before the ex parte appearance unless there is a showing of exceptional circumstances. A declaration of notice, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected, or a declaration stating reasons why notice should not be required, shall accompany every request for an ex parte order.

(c) **[Contents of application]** ~~A request~~ An application for an ex parte order ~~shall~~ must state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of such party if known to the applicant.

~~When~~ If an application for an ex parte order has been made to the court and has been refused in whole or in part, any subsequent application of the same character or for the same relief, although made upon an alleged different state of facts, ~~shall must~~ include a full disclosure of any ~~prior~~ previous applications and the court's actions.

1 ~~(e)~~(d) **[Content of notice and declaration regarding notice]** When notice of an
2 application is given, the person giving notice ~~shall~~ must state with specificity
3 the nature of the relief to be requested and the date, time, and place for the
4 ~~presentment~~ presentation of the application, and ~~shall~~ must attempt to
5 determine whether the opposing party ~~and/or counsel~~ will appear to oppose the
6 application. A declaration of the notice given, including the date, time,
7 manner, and name of the party informed, the relief sought, any response and
8 whether opposition is expected or a declaration stating why notice should not
9 be required, must accompany every application for an ex parte order.

10
11 ~~(d)~~(e) **[Required documents]** An ex parte applications shall must be in writing and
12 include all of the following:

- 13
14 (1) ~~a~~A application containing the case caption and stating the relief
15 requested;
16
17 (2) ~~a~~A declaration in support of the application making the factual showing
18 required under (f);
19
20 (3) ~~a~~A competent declaration based on personal knowledge ~~as described in of~~
21 the notice given under subdivision (b)(d);
22
23 (4) A memorandum of points and authorities; and
24
25 (5) ~~a~~A proposed order.

26
27 ~~(e)~~(f) **[Affirmative factual showing required]** An applicant ~~shall~~ must make an
28 affirmative factual showing in a declaration containing competent testimony
29 based on personal knowledge of irreparable harm, immediate danger, or any
30 other statutory basis for granting ~~ex parte~~ relief ex parte ~~rather than setting the~~
31 ~~matter for hearing on noticed motion.~~

32
33 ~~(f)~~(g) **[Service of papers]** Parties appearing at the ex parte hearing ~~shall~~ must serve
34 the ex parte application or any written opposition on all other appearing parties
35 at the first reasonable opportunity. Absent exceptional circumstances, no
36 hearing ~~shall~~ may be conducted unless such service has been made.

37
38 ~~(g)~~(h) **[Personal appearance requirements]** An ex parte application will be
39 considered without a personal appearance of the applicant ~~or applicant's~~
40 ~~counsel~~ in the following cases only:
41

- 1 (1) ~~a~~Applications to file a memorandum of points and authorities in excess of
2 the applicable page limit;
- 3
- 4 (2) ~~s~~Setting of hearing dates on alternative writs and orders to show cause;
5 and
- 6
- 7 (3) ~~s~~Stipulations by the parties or other orders of the court.